(2) An allegation that EABC were unlicensed moneylenders under the English Moneylenders Act and therefore all the loan transactions were void and unenforceable.

Secondly the Colocotronis group of companies, 17 in all, along with the 3 plaintiffs here commenced an action in the English Courts to declare mainly

(1) that all the loan agreements and mortgages were null and void under the English Moneylenders Act as EABC were unlicensed moneylenders.

(2) that all the Pierre Hotel agreements, transactions and arrangements were null and void or illegal on the grounds that they had acted under duress or fraudulent misrepresentation on the part of EABC.

They also claimed various other consequential reliefs. These two actions are scheduled for hearing in the English Courts towards the end of this year.

With this brief summary let me now turn to the other two grounds relied on by EABC and UMTT in their motions. As I have already stated the plaintiffs only filed their statement of claim in this action on January 31, 1978. In it the plaintiffs have abandoned their claim that they were the beneficial owners of the said vessel and they now say in paragraph 3 of this statement of claim that they bring and prosecute this action for the benefit of the company that is to say "Navegantes". The company itself is unable to bring this action in its name for reasons alleged in paragraph 9 of the statement of claim. The gist of their contention is that EABC exercising the control they had wrongfully acquired through the arrangements arrived at the meeting in the Pierre Hotel in December 1975, have now secured apparent control over "Navegantes". That being so the plaintiffs alleged that though they hold all the shares of "Navegantes" and have the control of the company yet they are unable to get solicitors to act for the company on their instructions. On what is now alleged in paragraph 9 of the statement of claim and all the affidavits and other documentary evidence that have been placed before me by all the parties I am of the view that there are sufficient circumstances here for the plaintiffs to be allowed to carry on this action in a representative capacity for the benefit of "Navegantes". I find though many of the issues involved in this action would be identical to many of the issues involved in the action in English Courts where the plaintiffs and their companies are suing EABC, yet some of the reliefs they are claiming in this action are different from those they were seeking in their English action and could not have been properly sought in that action.

As regards UMTT one of their submissions is that they are *bona fide* purchasers for value of the said vessel in a sale under a registered mortgage and that their title therefore would not be affected by the moneylenders' point taken by the plaintiffs against EABC.

Now UMTT were aware of the English litigation between the plaintiffs and EABC and also about the not too recent Perth Court proceedings concerning the said vessel between these parties. The sale of the said vessel was not a direct mortgagee's sale to them. There was an intermediate buyer, namely Reefer Transportation Corporation, between them. Reefer Transportation Corporation was a Liberian registered company with close connections with EABC. If I am not mistaken EABC financed UMTT in the purchase of the said vessel. Even if UMTT were right on their stand on the moneylenders point yet on all what I have indicated here it would appear that the *bona fides* of UMTT would be very much in issue.

If these two motions were founded on only these two grounds I would have decided in favour of the plaintiffs but of course on appropriate terms.

In view of my finding on the third ground I order that the warrant of arrest, the writ of summons and all subsequent proceedings be struck out with costs.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw; Rodyk & Davidson; Selvadurai & Emmanuel.*

THE "ATLANTIC FAITH"
S.C. GIOTIS & ORS. v. THE "ATLANTIC FAITH" (OWNERS)

[O.C.J. (Kulasekaram J.) June 27, 1978]

[Singapore — Admiralty in Rem No. 264 of 1977]

Shipping Law — Limitation period — Maritime Conventions Act 1911 — Claim brought after two years — Whether action time-barred — Application for leave to bring action outside the limitation period — Maritime Conventions Act. 1911, s. 8.

Shipping Law — Collision involving two ships — Loss of lives — Negligence — Damages — Action brought by dependants of deceased seamen — Jurisdiction — Whether High Court had jurisdiction — High Court (Admiralty Jurisdiction) Act (Cap. 6), s. 4(3) & 4(4) — Civil Law Act (Cap. 30), s. 12 — R.S.C. 1970, O. 70 r. 4(7).

In January 1973, the ship "Atlantic Faith" collided with another ship the "Anson" in the Straits of Malacca as a result of which ten seamen lost their lives. On June 23, 1977 the plaintiffs, dependants of these deceased seamen brought an action against the owners of the "Atlantic Faith" (hereinafter called the ship). The plaintiffs claimed damages alleging that such damage was done by the ship in the collision and arose out of the negligence of the defendants or their servants or agents. On the same date the plaintiffs applied for a warrant of arrest for the ship which was duly arrested in Singapore. On June 27, 1977 on satisfactory guarantee provided by the defendants, the ship was released.

The defendants entered a conditional appearance on June 29, 1977 and applied by way of motion on July 4, 1977 for, *inter alia*, the writ of Summons and all subsequent proceedings to be set aside for want of jurisdiction under section 4(3) or section 4(4) of the High Court (Admiralty Jurisdiction) Act. They also alleged that the action was time-barred under the Maritime Conventions Act 1911 and that the warrant of arrest be set aside for non-compliance with Order 70 rule 4(7) of the Rules of the Supreme Court 1970. In the meantime the plaintiffs applied by motion for leave pursuant to section 8 of the Maritime Conventions Act to validate the commencement of this action outside the limitation period.

Held, allowing the plaintiffs' motion: (1) the plaintiffs had satisfied the court that prior to June 1977 they did not have a reasonable opportunity of arresting the ship in any of the jurisdictions indicated in the second limb of the proviso to section 8 of the Maritime Conventions Act 1911;

(2) a claim for damage done by a ship would clearly give rise to a maritime lien. That being so the exercise of

the Admiralty jurisdiction *in rem* would be under section 4(3) and not under 4(4) of the High Court (Admiralty Jurisdiction) Act.

ADMIRALTY *IN REM*.

G. Pannirselvam for the plaintiffs.

S. Selvadurai for the defendants.

Kulasekaram J.: In January 1973 a collision occurred between the ship "Atlantic Faith" and another ship the "Anson" in the Straits of Malacca and as a result of this collision a number of Greek seamen and one Yemeni seaman serving on board the "Anson" then lost their lives. The ten plaintiffs in these proceedings are dependants of ten deceased seamen from the "Anson" and they bring this action under section 12 of the Civil Law Act in respect of loss of life of the deceased seamen whose names appear in the title to the action.

On June 23, 1977 these plaintiffs issued this writ *in rem* against the defendants, the owners of the ship the "Atlantic Faith" (hereinafter referred to as the said ship) and they claim damages from them alleging that such damage was done by the said ship in this collision and arose out of the negligence of the defendants or their servants or agents. They also on the same date applied for a warrant of arrest for the said ship and had the said ship duly arrested on the same day at the port of Singapore. Subsequently on June 27, 1977 on satisfactory guarantee in the form of a bond provided by the defendants to the satisfaction of the plaintiffs the said ship was released. The defendants entered a conditional appearance in these proceedings on June 29, 1977 and applied by way of motion on July, 4, 1977 for the following orders:

"1. That the writ of summons and all subsequent proceedings herein be set aside for want of jurisdiction under section 4(3) or 4(4) of the High Court (Admiralty Jurisdiction) Act (Cap. 6).

2. In the alternative, that the writ of summons and all subsequent proceedings herein be set aside on the grounds that at the date of commencement of proceedings, this action was time-barred under the Maritime Conventions Act 1911.

3. That the warrant of arrest be set aside on the grounds that the affidavit to lead the said warrant is defective in that it does not comply with Order 70 rule 4(7) of the Rules of the Supreme Court.

4. That the plaintiffs do pay damages to the defendants for wrongful arrest of the 'Atlantic Faith', such damages to be assessed by the Registrar of the Supreme Court.

5. That the plaintiffs do pay the defendants' costs of this action and/or Motion to be taxed if not agreed."

Mr. Gregory Emmanuel, a solicitor acting for the defendants filed an affidavit in support of this motion wherein he asserted that these proceedings were time-barred as they were commenced well after the two-year period from the date of collision and had infringed the provisions of section 8 of the Maritime Conventions Act, 1911. In fact here there was a lapse of more than 2½ years after the limitation period. He also further asserted that the claim of the plaintiffs did not constitute a maritime lien and therefore the claim here is one under section 4(4) and not section 4(3) of the High Court (Admiralty Jurisdiction) Act. As such the affidavit leading to the warrant of arrest affirmed by Mr. G. Pannirselvam on behalf of all the plaintiffs did not comply with the requirements of section 4(4) of the said Act and Order 70, rule 4(7) of the Rules of the Supreme Court in that the deponent has not satisfied this court that the person who would be liable on the claim in an action *in personam* was when the cause of action arose the owner of the said ship and is also the same person who beneficially owns all the shares of the said ship at the commencement of these proceedings.

In the meantime the plaintiffs also by way of motion applied on July 25 for leave pursuant to and for purposes of the proviso to section 8 of the Maritime Conventions Act to validate the commencement of this action outside the limitation period.

Both these motions were heard together before me. I propose to deal first with prayer 2 of the defendants' motion which seeks to set aside the writ and all subsequent proceedings on the ground that the action was time-barred. As the plaintiffs' motion is in effect for leave to bring this action after the 2 year limitation period had expired it is clear that substantially the same issues arise for consideration in both the plaintiffs' motion and prayer 2 of the defendants' motion. That being so I propose to consider these matters together.

It is convenient to first of all to set out here the relevant portions of section 8 of the Maritime Conventions Act 1911.

"8. *Limitation of actions*

No action shall be maintainable to enforce any claim or lien against a vessel or her owners in respect of any damage or loss to another vessel, her cargo ... or damages for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former vessel, whether such vessel be wholly or partly in fault, ... unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused. ...

Provided that any court having jurisdiction to deal with an action to which this section relates may, in accordance with the rules of court, extend any such period, to such extent and on such conditions as it thinks fit, and shall, if satisfied that there has not during such period been any reasonable opportunity of arresting the defendant vessel within the jurisdiction of the court, or within the territorial waters of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity."

The plaintiffs in support of their motion and to resist the motion of the defendants filed a number of affidavits, two of which are of particular relevance to these motions. One of the affidavits is from George Gontogiannis, a Greek national and the son-in-law of the 9th plaintiff. He lives and runs a coffeeshop in Piraeus, Greece. He states in his affidavit:

"1. I am the son-in-law of Demetrios Nicolaos Halkias, plaintiff and I assisted continuously my father-in-law with respect to taking care of his rights out of the loss of his son and supporter.

2. The deceased crew-members of the 'Anson' were reported after the collision to be missing, but for several weeks after the collision we were told by the 'Anson' people and the Greek Maritime Authorities that they might be rescued. Only on March 9, 1973 they have been definitely declared as dead by a report of that date concluding an investigation conducted in this respect by Piraeus Port Authorities. Said report was published a few days later and only then Certificates of death were issued. Naturally none thought about claims of recovery while there was still hope to rescue the missing men.

3. Every family, including my father's-in-law, collected much later a small statutory compensation from the employer 'Anson'. We had been advised from the beginning that, accord-

ing to the Greek law which provides for that compensation, we should be also entitled to an additional full recovery from the 'Atlantic Faith', should said ship be proven responsible for the collision. Nevertheless we had been simultaneously informed that her owning company had no assets except for the ship, which was either sunk or been scrapped after the collision and as a result no more existing. Said information was provided by the Greek newspapers at the time of the occurrence, by cables and reports which reached the Greek Ministry of Mercantile Marine, and later on, regarding the scrapping in particular, by the 'Anson' people at the time we collected the statutory compensation. We had neither reason to consider this information as being inaccurate, nor any indication to the contrary.

4. It was me that I learned by chance in April 1977 from a seaman in my coffee-shop, that a ship under the name of 'Atlantic Faith' was seen to be laid up in Hong Kong. I transferred this information to all rest families as well and we all instructed George Pavlakis, a Piraeus Solicitor introduced to us as being experienced with prosecution abroad, to find immediately out whether she was the same ship that had collided with the 'Anson', and in the affirmative case to proceed with any action necessary in order to secure our rights."

The other affidavit is from George Pavlakis, a Greek lawyer, who is acting for the plaintiffs in Greece. In his affidavit he confirms substantially what was stated by George Gontogiannis and further elaborated on the circumstances under which the plaintiffs were led to believe that the said ship as a result of the collision was either lost or scrapped soon after the incident. He also explained the circumstances why no action had been taken earlier by the plaintiffs in relation to this claim.

It is a contention of the defendants that as this action was not commenced within the 2 year period provided by section 8 of the Maritime Conventions Act 1911 the claim had become statute barred and the writ here and all subsequent proceedings should be set aside. It is submitted that as the collision giving rise to this claim occurred on January 6, 1973 the claim became time barred after January 6, 1975. Here the plaintiffs are in fact almost 2½ years out of time. They submit that the defendants should not be deprived of their statutory rights under this section unless it is shown by the plaintiffs under the proviso to this section that there are special circumstances which create a real reason why the statutory limitation should not take effect. It is their submission that there are no special circumstances here for the exercise of the court's discretion and therefore the prayer to have the writ set aside should be allowed.

The counsel for the plaintiffs on the other hand contends that the proviso to this section has 2 limbs. Under the second limb of the proviso if the plaintiffs satisfy the court that they had during that period no reasonable opportunity to arrest the vessel within the jurisdiction of the court or within the territorial waters of the country to which the said ship belongs, that is within the territorial waters of Liberia or in Greece or Yemen where the plaintiffs reside, then the court should extend the period to such an extent sufficient to give such a reasonable opportunity.

It is not in dispute that the said ship was in Singapore during the period January 12, 1973 and March 21, 1973 for repairs soon after the collision and thereafter not until March 1977.

As for the first period in 1973 when the ship was in Singapore within the jurisdiction of this court Mr. G. Pavlakis has explained in his affidavit why the plaintiffs were not able to arrest the said ship then. This is what he stated in that affidavit:

"In early 1973 the plaintiffs were not aware of the circumstances of the collision and how each of the ships was managed or manoeuvred before the collision. There was no reliable source from which they could have obtained this information. In any event the plaintiffs would not have been able to obtain this information within a period of three months after the collision. Thus the plaintiffs were not in a position to allege fault on the part of the 'Atlantic Faith', make a claim or commence proceedings against the 'Atlantic Faith' in Singapore or elsewhere and effect an arrest of the 'Atlantic Faith' before the end of March 1973."

This coupled with what he has further stated about the information that the plaintiffs had received about the circumstances of the collision and not challenged by the defendants in my view satisfactorily explains that during that period the plaintiffs did not have a reasonable opportunity of arresting the said ship in Singapore.

Thereafter the next time the said ship was in Singapore was in March 1977 and May 1977 before it was arrested in June 1977. We do not know for how long the said ship was in Singapore in March 1977 and in May 1977. All that Mr. Emmanuel has stated in his affidavit filed on behalf of the defendants was that the said ship had called in Singapore in March 1977 and May 1977. From the extracts from the Lloyds Shipping Index filed on behalf of the plaintiffs for the relevant period concerning the movement of the said ship all that one could gather was that the ship was in Singapore on March 31 and thereafter in April and May 1977 before it was arrested in June 1977. On these facts can it be said the plaintiffs had been in any way dilatory and that they during this period in March 1977 and May 1977 had a reasonable opportunity of arresting the said vessel before its actual arrest in June 1977? What the plaintiffs have to satisfy the court under the second limb of the proviso to section 8 of the Maritime Conventions Act 1911 is that they did not have a reasonable opportunity of arresting the said ship and not that they did not have any opportunity of arresting the said ship earlier. On all the affidavit evidence before me I found that the plaintiffs have satisfactorily discharged this burden.

On all the other evidence here the only other possible opportunity the plaintiffs had of arresting the said ship within the jurisdiction of the country of the said ship, that is Liberia, or in Greece or Yemen where the plaintiffs reside was in February 1976 when the defendants allege the said ship had called at Pireaus, Greece. Again having regard to the extracts from Lloyds Shipping List concerning the movement of the said ship during this period it cannot be said that the ship had been at Pireaus, Greece, if at all it had called there, for any length of time. Moreover according to what Mr. George Pavlakis, the Greek lawyer, has said about the law of Greece, it would appear that under Greek law the limitation of action operates at the expiration of the two years from the time of collision and the Greek courts do not have any power to extend the time. If that were so any arrest of the said ship in February 1976 would be of no avail to the plaintiffs.

For these reasons I find that the plaintiffs have satisfied this court that prior to June 1977 they did

not have a reasonable opportunity of arresting the said ship in any of the jurisdictions indicated in the second limb of the proviso to section 8 and that being so I dismissed prayer 2 of the defendants' motion here and allowed the motion of the plaintiffs and granted the necessary leave thereby extending time till June 23, 1977 for the plaintiffs to have had a reasonable opportunity to arrest the said ship which in fact they had done and to regularise the present proceedings.

In these circumstances if on the facts here it were treated as a case not under the obligatory part of the proviso then under the first discretionary part of the proviso, I would have allowed the plaintiffs' motion and consequently dismissed the second prayer of the defendants' motion.

Before beginning to consider prayers 1 and 3 of the defendants' motion it would be convenient to set out here the relevant portions of sections 3 and 4 of the High Court (Admiralty Jurisdiction) Act.

"3.—(a) The admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims:

(a) ....

(b) ....

(c) ....

(d) any claim for damage done by the ship;

(e) ....

(f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;

(g) ....

4.—(1) ....

(2) ....

(3) In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, the admiralty jurisdiction of the court may be invoked by an action *in rem* against that ship, aircraft or property.

(4) In the case of any such claim as is mentioned in paragraphs (d) to (q) of subsection (1) of section 3 of this Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action *in personam* was, when the cause of the action arose, the owner or charterer of, or in possession or in control of, the ship, the admiralty jurisdiction of the court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action *in rem* against —

(a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; or

(b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid."

Under prayer 1 of the defendants' motion their main complaint is that the claim by the plaintiffs for damages for loss of life comes under head (f) and not head (d) of section 3 of the High Court (Admiralty Jurisdiction) Act. I cannot agree with this submission as this claim quite clearly comes under head (d) as a claim for damage done by the said ship. This claim may also be treated as a claim under head (f) but that is beside the point here.

Again a claim for damage done by a ship clearly gives rise to a maritime lien. That being so the exercise of the Admiralty jurisdiction *in rem* is under section 4(3) and not under section 4(4). We have only to consider prayer 3 of the defendants' motion if the exercise of the *in rem* jurisdiction is under section 4(4).

For these reasons prayers (1) and (3) of the defendants' motion are also dismissed.

In the result the motion of the plaintiffs is allowed and that of the defendants is dismissed. The plaintiffs shall have the costs of these motions.

Plaintiffs' motion allowed.

Solicitors: *Drew & Napier; Selvadurai & Emmanuel.*

THE "ANDARA"
RE APPLICATION BY C.V. PALEM

[O.C.J. (Kulasekaram J.) July 4, 1978]
[Singapore — Originating Motion No. 8 of 1976]

Immigration — Seizure and forfeiture — Vessel harbouring illegal immigrants — Meaning of "vessel below 75 tons" — Ambiguity in penal provision — Adoption of construction favourable to applicant — Authority of officer making seizure in question — Immigration Act (Cap. 81), ss. 3(1) & (2), 49.

Administrative Law — Certiorari — To remove into court and quash magistrate's order.

The applicant, an organisation incorporated under Indonesian laws and having its registered office at Jakarta, Indonesia, was the owner of the ship "Andara". The said ship was engaged in a ferry service between Singapore and the Batam Islands. On March 31, 1975, immigration officials boarding the said ship discovered eleven illegal immigrants hidden in the mid-section of the ship. The master of the ship was arrested and the said ship was seized and detained by the immigration officials. Consequent on the conviction of the master, an inquiry for the disposal of the ship under section 49 of the Immigration Act (Cap. 81) was held and the subsequent order of forfeiture was made by the Magistrate. The applicant had applied for an order of *certiorari* to have the said Order of the Magistrate removed into court and quashed. He contended, *inter alia*, that the learned Magistrate had erred in holding that the word "tons" in section 49 of the Immigration Act meant the net registered tons of the said ship and in failing to hold that the said ship, having the loaded displacement of 86 tons, was not liable to forfeiture under section 49 of the Immigration Act.

Held: (1) a construction more favourable to the applicant should be adopted to resolve any ambiguity in a penal provision;

(2) when the legislature used the phrase "any vessel below 75 tons" without specifying what type of "ton" was intended it really intended the phrase to mean "any vessel whose gross registered tonnage and its displacement tonnage are both below 75 tons";

(3) before an order for forfeiture could be made there should be a proper seizure of the said ship under section 49. In this case as there was no proper evidence that the immigration officer was duly authorised by the Controller in writing, the seizure was bad and hence the forfeiture too would be bad;

(4) if there were satisfactory evidence that the vessel was used in the commission of an offence under the Immigration Act, it was immaterial whether the owner had knowledge or consented to it.